

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

ALABAMA AIRCRAFT INDUSTRIES,
INC., *et al.*,

Debtors.

Chapter 11

Case No. 11-10452 (PJW)

Jointly Administered

**STATEMENT OF ISSUES TO BE PRESENTED
AND DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, the Boeing Company files its statement of issues to be presented and designation of items to be included in the record on appeal.

Statement of Issues to be Presented

I. Assuming that Official Committee of Unsecured Creditors of Cybergenics Corporation v. Chinery, 330 F.3d 548 (3d Cir. 2003) (“Cybergenics”) was correctly decided, whether Cybergenics and the applicable provisions of title 11 of the United States Code (the “Bankruptcy Code”) authorized the bankruptcy court to grant the novel and unprecedented relief in the order (D.I. 486) (the “Order”) with respect to the litigation trust and the trust causes of action, including the establishment of a litigation trust outside of a chapter 11 plan?

II. Assuming that Cybergenics authorized the bankruptcy court to grant the novel and unprecedented relief in the Order with respect to the litigation trust and the trust causes of action, whether the bankruptcy court correctly applied Cybergenics given the record and evidence before it?

III. Assuming that Cybergenics authorized the bankruptcy court to grant the novel and unprecedented relief in the Order with respect to the litigation trust and the trust causes of action,

whether (a) the bankruptcy court erred when it made a declaratory judgment that the trust causes of action vest in the litigation trust without regard to, or consideration of, restrictions under applicable law regarding the assignability or transferability of the trust causes of action and (b) such vesting violated applicable non-bankruptcy law, the applicable provisions of the Bankruptcy Code and controlling precedent in this jurisdiction?

IV. Whether the bankruptcy court erred in ruling that 11 U.S.C. § 363(m) applies to the establishment of the litigation trust and the purported vesting of the trust causes of action in the litigation trust potentially limiting appellate review by an Article III court?

V. Whether the bankruptcy court erred by granting the relief with respect to the litigation trust and the trust causes of action, including the establishment of a litigation trust outside of a chapter 11 plan, when the sale motion (D.I. 456) did not state the grounds for the actual relief requested in violation of, among other things, Rule 9013 of the Federal Rules of Bankruptcy Procedure?

Upon information and belief, this is the first time a bankruptcy court has ever (a) authorized the formation of a litigation trust outside of a plan pursuant to 11 U.S.C. § 1123(b)(3)(B) and (b) authorized the transfer or assignment of causes of action to a third party in the context of a sale without regards to, or consideration of, restrictions under applicable law regarding the assignability or transferability of the trust causes of action. Therefore, we believe that all of the issues presented are matters of first impression.

Designation of Items to be Included in the Record on Appeal

<u>Description of Item¹</u>	<u>D.I. No.</u>
1. Order to Retain Ordinary Course Professionals	93
2. Transcript regarding Hearing Held 3/24/2011 RE: Omnibus Hearing	144
3. Reply to the Objections Filed by the Debtors, Special Value Bond Fund LLC, and Pension Benefit Guarantee Corporation to The Boeing Company's Motion for Adequate Protection Filed by The Boeing Company	159
4. Schedules/Statements filed: Sch A, Sch B, Sch D, Sch E, Sch F, Sch G, Sch H, Sum of Schs, Decl Concerning Debtors Schs., Alabama Aircraft Industries, Inc. - Birmingham Filed by Alabama Aircraft Industries, Inc.	169
5. Sur-Reply of the Debtors in Further Support of Their Objection to the Boeing Company's Motion for Adequate Protection Filed by Alabama Aircraft Industries, Inc.	184
6. Debtors' Motion Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of the Sale Order (i) Approving the Sale of Assets, Including the Assumption and Assignment of Contracts, Free and Clear of All Liens, Claims, and Interests and (ii) Approving the Form and Manner of Notice of Assumption and Assignment of Contracts Filed by Alabama Aircraft Industries, Inc.	279
7. Debtors' First Quarterly Operating Report for Ordinary Course Professionals Filed by Alabama Aircraft Industries, Inc.	295
8. Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein Filed by Alabama Aircraft Industries, Inc.	450

¹ Every item includes all applicable exhibits and other filings with respect to such D.I.

9. Debtors Motion for an Order Shortening the Time for Notice of the Hearing to Consider Debtors Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein	451
10. Order Shortening the Time for Notice of the Hearing to Consider Debtors' Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors' Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Assign Certain Claims to a Litigation Trust	452
11. Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein [Corrected Version] Filed by Alabama Aircraft Industries, Inc.. Hearing scheduled for 9/1/2011 at 10:00 AM at US Bankruptcy Court, 824 Market St., 6th Fl., Courtroom #2, Wilmington, Delaware. Objections due by 8/29/2011	456
12. Response and Reservation or Rights with Respect to the Debtors Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially All of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of All Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein	460
13. Objection Of the Boeing Company to Debtors 363 Motion (related document(s) 456) Filed by The Boeing Company	464
14. Certificate of Service for Objection Of the Boeing Company to Debtors 363 Motion (related document(s) 456) Filed by The Boeing Company	465
15. Supplemental Certificate of Service for Objection Of the Boeing Company to Debtors 363 Motion (related document(s) 456) Filed by The Boeing Company	466

16. Response / Debtors' Motion for Leave to File Debtors' Response to the Objection of The Boeing Company to the Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein [Corrected Version] (related document(s) 456 , 464) Filed by Alabama Aircraft Industries, Inc.	472
17. Motion for Leave to File Reply Of Kaiser Aircraft Industries, Inc. To The Objection Of The Boeing Company To The Debtors Motion Pursuant To Sections 105(A), 363, And 365 Of The Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, And 9014, And Local Rules 2002-1 And 6004-1, Seeking Entry Of An Order Approving The Sale Of Substantially All Of The Debtors Operating Assets, Including The Assumption And Assignment Of Contracts And Leases, Free And Clear Of All Liens, Claims And Interests To Kaiser Aircraft Industries, Inc. And Authorizing The Debtors To Establish A Litigation Trust And Vest Certain Claims Therein	473
18. Objection to (1) the Debtors' Motion for Leave to File a Response to The Boeing Company's Objection to Sale Motion [Corrected Version] and (2) Kaiser Aircraft Industries, Inc.'s Motion for Leave to File a Reply to The Boeing Company's Objection to Sale Motion	475
19. Response Of Official Committee Of Unsecured Creditors To Debtors' Motion Seeking Entry Of An Order Approving The Sale Of Substantially All Of The Debtors' Operating Assets, Including The Assumption And Assignment Of Contracts And Leases, Free And Clear Of All Liens Claims And Interests To Kaiser Aircraft Industries, Inc. And Authorizing The Debtors To Establish A Litigation Trust And Vest Certain Claims Therein (Related Docket No. 456), Filed by Official Committee of Unsecured Creditors	478

20. Order Granting Debtors' Motion Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rules 2002-1 and 6004-1, Requesting Entry of an Order Approving the Sale of Substantially all of the Debtors Operating Assets, Including the Assumption and Assignment of Contracts and Leases, Free and Clear of all Liens, Claims, and Interests to Kaiser Aircraft Industries, Inc. and Authorizing the Debtors to Establish a Litigation Trust and Vest Certain Claim Therein (Related Doc # 456 , 485) Order Signed on 9/6/2011	486
21. Monthly Application for Compensation of Alston & Bird LLP for the period (Sixth) July 1, 2011 to July 31, 2011 Filed by Alston & Bird LLP. Objections due by 9/22/2011	487
22. Transcript and Exhibits regarding Hearing Held 9/1/2011 RE: Sale Hearing (Debtors' Exhibit 1 and Debtors' Exhibit 2 are not included. The Bankruptcy Court should have a copy. Counsel for the Boeing Company will supplement as needed.)	508
23. Notice of Filing Complaint	510
24. Notice of Appeal .(BAP-11-71). Fee Amount \$255. (related document(s) 486) Filed by The Boeing Company. Appellant Designation due by 10/3/2011	511
25. Supplemental Certificate of Service regarding Notice of Filing Complaint and Notice of Appeal	513
26. Notice of Service Notice of Transmittal of Notice of Appeal to Bankruptcy Judge Pursuant to Del. Bankr. L.R. 8001-1(b) (related document(s) 511) Filed by The Boeing Company	514
27. Monthly Application for Compensation of Young Conaway Stargatt & Taylor, LLP for the period (Seventh) August 1, 2011 to August 31, 2011 Filed by Young Conaway Stargatt & Taylor, LLP. Objections due by 10/6/2011	515

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DATED: October 3, 2011.

/s/ Christopher D. Loizides

Christopher D. Loizides (No. 3968)

LOIZIDES, P.A.

1225 King Street, Suite 800

Wilmington, DE 19801

Telephone: (302) 654-0248

Facsimile: (302) 654-0728

Email: loizides@loizides.com

Robert M.D. Mercer

Bryan Cave LLP

One Atlantic Center, 14th Floor

1201 West Peachtree Street, NW

Atlanta, GA 30309-3488

Telephone: (404) 572-6600

Facsimile: (404) 572-6999

Email: robert.mercer@bryancave.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:) CHAPTER 11
)
ALABAMA AIRCRAFT INDUSTRIES, INC., *et al.*¹,) Case No. 11-10452 (PJW)
) (Jointly Administered)
Debtors.)
)
_____)

CERTIFICATE OF SERVICE

I, Christopher D. Loizides, hereby certify that on October 3, 2011, I did cause to be served true and correct copies of **DESIGNATION OF ITEMS AND STATEMENT OF ISSUES** on the parties listed on the attached service list as indicated thereon.

DATED: October 3, 2011

/s/ Christopher D. Loizides
Christopher D. Loizides (No. 3968)
LOIZIDES, P.A.
1225 King Street, Suite 800
Wilmington, DE 19801
Telephone: (302) 654-0248
Facsimile: (302) 654-0728
E-mail: loizides@loizides.com

¹ The debtors in these jointly-administered cases are: Alabama Aircraft Industries, Inc.; Alabama Aircraft Industries, Inc. – Birmingham; and Pemco Aircraft Engineering Services, Inc.

SERVICE LIST

VIA FIRST CLASS MAIL

Alabama Aircraft Industries, Inc., et al.

Alston & Bird LLP
Grant T. Stein
Dennis J. Connolly
William S. Sugden
Sage M. Sigler
1201 West Peachtree Street
Atlanta, Georgia 30309-3424
Telephone: (404) 881-7000

Young Conaway Stargatt & Taylor, LLP
Joel A. Waite
Kenneth J. Enos
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, Delaware 19801-0391
Telephone: (302) 571-6600

Kaiser Aircraft Industries, Inc.

Klee, Tuchin, Bogdanoff & Stern LLP
Thomas E. Patterson
Martin R. Barash
1999 Ave. of the Stars, 39th Floor
Los Angeles, California 90067
Telephone: (310) 407-4000

Pachulski, Stang, Ziehl & Jones LLP
Bruce Grohsgal
919 North Market Street, 17th Floor
Wilmington, Delaware 19801
Telephone: (302) 778-6403

Roberta A. DeAngelis, United States Trustee

United States Department of Justice
Office of the United States Trustee
Richard L. Schepacarter
Trial Attorney
J. Caleb Boggs Federal Building
844 King Street, Room 2207
Wilmington, Delaware 19801
Telephone: (302) 573-6491

Official Committee of Unsecured Creditors

Brinkman Portillo Ronk, PC
Daren R. Brinkman
Laura J. Portillo
Kevin C. Ronk
4333 Park Terrace Drive, Suite 205
Westlake Village, California 91361
Telephone: (818) 597-2992

Womble Carlyle Sandridge & Rice, PLLC
Steven K. Kortanek
Thomas M. Horan
222 Delaware Avenue, Suite 1501
Wilmington, Delaware 19801
Telephone: (302) 252-4320

Birmingham Airport Authority

Burr & Forman LLP
Derek F. Meek
Michael K. Choy
Marc P. Solomon
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 251-3000

Morris, Nichols, Arsh & Tunnell LLP
Eric D. Schwartz
Matthew B. Harvey
1201 North Market Street
Wilmington, Delaware 19899
Telephone: (302) 658-9200

Pension Benefit Guaranty Corporation

Pension Benefit Guaranty Corporation
Office of the Chief Counsel
Israel Goldowitz
Karen L. Morris
James L. Eggeman
Erika E. Barnes
Mark R. Snyder
1200 K Street, N.W., Suite 340
Washington, D.C. 20005-4026
Telephone: (202) 326-4020, ext. 3460

Oracle America, Inc.

Magnozzi & Kye, LLP
Amish R. Doshi
1 Expressway Plaza
Suite 114
Roslyn Heights, New York 11577
Telephone: (516) 629-5460

Shawn M. Christianson, Esq.
Buchalter Nemer, A Professional Corporation
333 Market Street
25th Floor
San Francisco, California 94105-2126
Telephone: (415) 227-0900

Lockheed Martin Integrated Systems, Inc.

Saul Ewing LLP
Mark Minuti
222 Delaware Avenue
Suite 1200
P.O. Box 1266
Wilmington, Delaware 19899
Telephone: (302) 421-6800

**Lockheed Martin Global Training and
Logistics**

Steven J. Solomon
Gray Robinson, P.A.
1221 Brickell Avenue, Suite 1600
Miami, Florida 33131
Telephone: (305) 416-6880

**L-3 Communications Integrated Systems,
L.P.**

Greenberg Traurig, LLP
Dennis A. Meloro
Scott D. Cousins
1007 North Orange Street
Suite 1200
Wilmington, Delaware 19801
Telephone: (302) 661-7000

Special Value Bond Fund, LLC

Richards, Layton & Finger, P.A.
Russell C. Silberglied
John H. Knight
L. Katherine Good
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700

**International Union, United Automobile,
Aerospace and Agricultural Implement
Workers of America**

Cooch and Taylor PA
Susan Kaufman
The Brandywine Building
1000 West Street
10th Floor
Wilmington, Delaware 19801
Telephone: (302) 984-3820

Cohen, Weiss and Simon, LLP
Bruce S. Levine
330 West 42nd Street
25th Floor
New York, New York 10036
Telephone: (212) 356-0230

Niraj R. Ganatra
International Union UAW
8000 E. Jefferson Avenue
Detroit, Michigan 48214
Telephone: (313) 926-5216

Blue Cross and Blue Shield of Alabama

Monzack Mersky McLaughlin and Browder,
P.A.
Michael Hochman
Rachel B. Mersky
1201 N. Orange Street
Suite 400
Wilmington, Delaware 19801
Telephone: (302) 656-8162

Burr & Forman, LLP
Joe A. Joseph
420 North 20th Street
Birmingham, Alabama 35203
Telephone: (205) 251-3000

United States Department of Justice

Victor Zhao
Civil Division
U.S. Department of Justice
via regular mail
P.O. Box 875
Ben Franklin Station
Washington, D.C. 20044-0875

via overnight delivery
1100 L Street, N.W.
Room 10044
Washington, D.C. 20005
Telephone: (202) 307-0958

Joseph Ryan as the Trustee of the Litigation Trust

Haskell Slaughter Young & Rediker, LLC

J. Michael Rediker

Roger A. Brown

Patricia C. Diak

R. Scott Williams

Peter J. Tepley

Vincent J. Graffeo

2001 Park Place, Suite 1400

Birmingham, Alabama 35303

Telephone (205) 251-1000